

SENATE JOINT RESOLUTION NO. 9—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

MARCH 26, 2007

Referred to Committee on Judiciary

SUMMARY—Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. (BDR C-661)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court.

Legislative Counsel's Digest:

- 1 This resolution proposes an amendment to the Nevada Constitution to allow the
2 Legislature to establish an intermediate appellate court, known as the court of
3 appeals. If the Legislature establishes the court of appeals, the court must consist of
4 at least three judges. The initial judges will be elected at the first general election
5 after the creation of the court, and each judge will be elected to serve a term of 6
6 years.
7 The court will have appellate jurisdiction in civil cases arising in district court
8 and in criminal cases within the original jurisdiction of the district courts. The
9 Nevada Supreme Court must fix the jurisdiction of the court and provide for the
10 review of appeals decided by the court.
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1 **RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF**
2 **NEVADA, JOINTLY, That a new section, designated Section 3A, be**
3 **added to Article 6 of the Nevada Constitution to read as follows:**

4 ***Sec. 3A. 1. The Legislature may provide by law for***
5 ***the creation of a court of appeals.***

6 ***2. If the Legislature creates a court of appeals***
7 ***pursuant to subsection 1, then:***



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1 (a) *The court of appeals must consist of three judges or*
2 *such greater number as the Legislature may provide by law.*
3 *If the number of judges is so increased, the Supreme Court*
4 *may provide by rule for the assignment of any appeal to a*
5 *panel of three judges for decision.*

6 (b) *Except as otherwise provided in paragraph (c) and*
7 *unless the Legislature provides for a term of fewer years*
8 *pursuant to paragraph (d), each judge of the court of*
9 *appeals must be elected by the qualified electors of this State*
10 *at the general election for a term of 6 years beginning on*
11 *the first Monday of January next after the election. The*
12 *initial judges of the court of appeals must be elected by the*
13 *qualified electors of this State at the first general election*
14 *following the creation of the court of appeals.*

15 (c) *Notwithstanding the provisions of paragraph (b), if,*
16 *at the time that the Legislature establishes a court of*
17 *appeals, this Article provides for the appointment of each*
18 *justice of the Supreme Court and judge of the district court*
19 *by the Governor, each judge of the court of appeals must be*
20 *appointed by the Governor in the manner and for the term*
21 *provided in Section 20 of this Article.*

22 (d) *Except as otherwise provided in paragraph (e), if*
23 *there is an increase in the number of judges of the court of*
24 *appeals, each additional judge must be elected by the*
25 *qualified electors of this State at the first general election*
26 *following the increase for a term beginning on the first*
27 *Monday of January next after the election. The Legislature*
28 *shall provide for an initial term of 6 or fewer years for each*
29 *additional judge so that the terms of all judges of the court*
30 *of appeals expire at the same time.*

31 (e) *Notwithstanding the provisions of paragraph (d), if,*
32 *at the time that there is an increase in the number of judges*
33 *of the court of appeals, this Article provides for the*
34 *appointment of each justice of the Supreme Court and judge*
35 *of the district court by the Governor, each additional judge*
36 *must be appointed by the Governor in the manner and for*
37 *the term provided in Section 20 of this Article.*

38 (f) *The Supreme Court shall appoint one of the judges*
39 *of the court of appeals to be chief judge. The chief judge*
40 *serves a term of 4 years and may succeed himself. The chief*
41 *judge may resign his position as chief judge without*
42 *resigning from the court of appeals.*



1 And be it further

2 RESOLVED, That Section 1 of Article 6 of the Nevada
3 Constitution be amended to read as follows:

4 Section 1. The judicial power of this State ~~{shall be}~~ *is*
5 vested in a court system, comprising a Supreme Court, *a*
6 *court of appeals, if established by the Legislature*, district
7 courts ~~{}~~ and justices of the peace. The Legislature may also
8 establish, as part of the system, courts for municipal purposes
9 only in incorporated cities and towns.

10 And be it further

11 RESOLVED, That Section 4 of Article 6 of the Nevada
12 Constitution be amended to read as follows:

13 Sec. 4. *1.* The Supreme Court ~~{shall}~~ *and the court of*
14 *appeals, if established by the Legislature*, have appellate
15 jurisdiction in all civil cases arising in district courts, and also
16 on questions of law alone in all criminal cases in which the
17 offense charged is within the original jurisdiction of the
18 district courts. *If the Legislature establishes a court of*
19 *appeals, the Supreme Court shall fix the jurisdiction of the*
20 *court of appeals and provide for the review, where*
21 *appropriate, of appeals decided by the court of appeals.* The
22 ~~{court shall}~~ *Supreme Court and the court of appeals* also
23 have power to issue writs of mandamus, certiorari,
24 prohibition, quo warranto ~~{}~~ and habeas corpus and also all
25 writs necessary or proper to the complete exercise of ~~{its~~
26 ~~appellate}~~ *their* jurisdiction. Each ~~{of the justices shall have~~
27 ~~power to}~~ *justice of the Supreme Court and judge of the*
28 *court of appeals may* issue writs of habeas corpus to any part
29 of the State, upon petition by, or on behalf of, any person held
30 in actual custody ~~{}~~ *in this State* and may make such writs
31 returnable ~~{, before himself}~~ *before the issuing justice or*
32 *judge* or the ~~{Supreme Court,}~~ *court of which the justice or*
33 *judge is a member*, or before any district court in the State or
34 ~~{before}~~ any judge of ~~{said courts,}~~ *a district court.*

35 *2.* In case of the disability or disqualification, for any
36 cause, of ~~{the Chief Justice or one of the associate justices}~~ *a*
37 *justice* of the Supreme Court, ~~{for any two of them,}~~ the
38 Governor ~~{is authorized and empowered to designate any}~~
39 *may designate a judge of the court of appeals or a* district
40 judge ~~{or judges}~~ to sit in the place ~~{or places of such}~~ *of the*
41 disqualified or disabled justice. ~~{for justices, and said judge or~~
42 ~~judges so designated shall receive their}~~ *The judge*
43 *designated by the Governor is entitled to receive his* actual
44 expense of travel and otherwise while sitting in the Supreme
45 Court.



* S J R 9 7 4 *

1 3. *In case of the disability or disqualification, for any*
2 *cause, of a judge of the court of appeals, the Governor may*
3 *designate a district judge to sit in the place of the disabled or*
4 *disqualified judge. The judge that the Governor designates*
5 *is entitled to receive his actual expense of travel and*
6 *otherwise while sitting in the court of appeals.*

7 And be it further

8 RESOLVED, That Section 7 of Article 6 of the Nevada
9 Constitution be amended to read as follows:

10 Sec. 7. The times of holding the Supreme Court , *the*
11 *court of appeals, if established by the Legislature, and the*
12 district courts ~~[shall]~~ *must* be as fixed by law. The terms of
13 the Supreme Court ~~[shall]~~ *must* be held at the seat of
14 government unless the Legislature otherwise provides by law,
15 except that the Supreme Court may hear oral argument at
16 other places in the State. *The terms of the court of appeals, if*
17 *established by the Legislature, must be held at the place*
18 *provided by law.* The terms of the district courts ~~[shall]~~ *must*
19 be held at the county seats of their respective counties unless
20 the Legislature otherwise provides by law.

21 And be it further

22 RESOLVED, That Section 8 of Article 6 of the Nevada
23 Constitution be amended to read as follows:

24 Sec. 8. 1. The Legislature shall determine the number
25 of justices of the peace to be elected in each city and
26 township of the State ~~[]~~ and shall fix by law their
27 qualifications, their terms of office and the limits of their civil
28 and criminal jurisdiction, according to the amount in
29 controversy, the nature of the case, the penalty provided ~~[]~~ or
30 any combination of these.

31 2. The provisions of this section affecting the number,
32 qualifications, terms of office and jurisdiction of justices of
33 the peace become effective on the first Monday of January,
34 1979.

35 3. The Legislature shall also prescribe by law the
36 manner, and determine the cases , in which appeals may be
37 taken from justices and other courts. The Supreme Court, *the*
38 *court of appeals, if established by the Legislature, the*
39 district courts ~~[]~~ and such other courts ~~[]~~ as the Legislature
40 shall designate ~~[shall be]~~ *are* courts of record.

41 And be it further

42 RESOLVED, That Section 11 of Article 6 of the Nevada
43 Constitution be amended to read as follows:

44 Sec. 11. The justices of the Supreme Court , *the judges*
45 *of the court of appeals, if established by the Legislature, and*



1 the district judges ~~[shall be]~~ *are* ineligible to any office, other
2 than a judicial office, during the term for which they ~~[shall]~~
3 have been elected or appointed . ~~[; and all]~~ *All* elections or
4 appointments of any such judges by the people, Legislature
5 ~~[;]~~ or otherwise ~~[;]~~ during said period ~~[;]~~ to any office other
6 than judicial ~~[, shall be]~~ *are* void.

7 And be it further

8 RESOLVED, That Section 15 of Article 6 of the Nevada
9 Constitution be amended to read as follows:

10 ~~[Sec:]~~ *Sec.* 15. The justices of the Supreme Court , *the*
11 *judges of the court of appeals, if established by the*
12 *Legislature, and the* district judges ~~[shall]~~ *are* each *entitled* to
13 receive for their services a compensation to be fixed by law
14 and paid in the manner provided by law, which ~~[shall]~~ *must*
15 not be increased or diminished during the term for which they
16 ~~[shall]~~ have been elected, unless a vacancy occurs, in which
17 case the successor of the former incumbent ~~[shall]~~ *is entitled*
18 *to* receive only such salary as may be provided by law at the
19 time of his election or appointment . ~~[; and provision shall]~~ *A*
20 *provision must* be made by law for setting apart from each
21 year's revenue a sufficient amount of money ~~[;]~~ to pay such
22 compensation.

23 And be it further

24 RESOLVED, That Section 20 of Article 6 of the Nevada
25 Constitution be amended to read as follows:

26 Sec. 20. 1. When a vacancy occurs before the
27 expiration of any term of office in the Supreme Court *or the*
28 *court of appeals, if established by the Legislature,* or among
29 the district judges, the Governor shall appoint a justice or
30 judge from among three nominees selected for such
31 individual vacancy by the Commission on Judicial Selection.

32 2. The term of office of any justice or judge so appointed
33 expires on the first Monday of January following the next
34 general election.

35 3. Each nomination for the Supreme Court ~~[shall]~~ *or the*
36 *court of appeals, if established by the Legislature, must* be
37 made by the permanent Commission, composed of:

38 (a) The Chief Justice or an associate justice designated by
39 him;

40 (b) Three members of the State Bar of Nevada, a public
41 corporation created by statute, appointed by its Board of
42 Governors; and

43 (c) Three persons, not members of the legal profession,
44 appointed by the Governor.



4. Each nomination for the district court ~~[shall]~~ **must** be made by a temporary commission composed of:

(a) The permanent Commission;

(b) A member of the State Bar of Nevada resident in the judicial district in which the vacancy occurs, appointed by the Board of Governors of the State Bar of Nevada; and

(c) A resident of such judicial district, not a member of the legal profession, appointed by the Governor.

5. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this State, the Legislature shall provide by law, or if it fails to do so the **Supreme** Court shall provide by rule, for the appointment of attorneys at law to the positions designated in this section to be occupied by members of the State Bar of Nevada.

6. The term of office of each appointive member of the permanent Commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. The additional members of a temporary commission ~~[shall]~~ **must** be appointed when a vacancy occurs, and their terms ~~[shall]~~ expire when the nominations for such vacancy have been transmitted to the Governor.

7. An appointing authority shall not appoint to the permanent Commission more than:

(a) One resident of any county.

(b) Two members of the same political party.

→ No member of the permanent Commission may be a member of ~~[a]~~ **the** Commission on Judicial Discipline.

8. After the expiration of 30 days from the date on which the Commission on Judicial Selection has delivered to him its list of nominees for any vacancy, if the Governor has not made the appointment required by this Section, he shall make no other appointment to any public office until he has appointed a justice or judge from the list submitted.

~~[→ If a commission on judicial selection is established by another section of this Constitution to nominate persons to fill vacancies on the Supreme Court, such commission shall serve as the permanent Commission established by subsection 3 of this Section.]~~



1 And be it further

2 RESOLVED, That Section 21 of Article 6 of the Nevada
3 Constitution be amended to read as follows:

4 Sec. 21. 1. A justice of the Supreme Court, *a judge of*
5 *the court of appeals, if established by the Legislature*, a
6 district judge, a justice of the peace or a municipal judge may,
7 in addition to the provision of Article 7 for impeachment, be
8 censured, retired, removed or otherwise disciplined by the
9 Commission on Judicial Discipline. Pursuant to rules
10 governing appeals adopted by the Supreme Court, a justice or
11 judge may appeal from the action of the Commission to the
12 Supreme Court, which may reverse such action or take any
13 alternative action provided in this subsection.

14 2. The Commission is composed of:

15 (a) Two justices or judges appointed by the Supreme
16 Court;

17 (b) Two members of the State Bar of Nevada, a public
18 corporation created by statute, appointed by its Board of
19 Governors; and

20 (c) Three persons, not members of the legal profession,
21 appointed by the Governor.

22 ➔ The Commission shall elect a Chairman from among its
23 three lay members.

24 3. If at any time the State Bar of Nevada ceases to exist
25 as a public corporation or ceases to include all attorneys
26 admitted to practice before the courts of this State, the
27 Legislature shall provide by law, or if it fails to do so the
28 *Supreme* Court shall provide by rule, for the appointment of
29 attorneys at law to the positions designated in this Section to
30 be occupied by members of the State Bar of Nevada.

31 4. The term of office of each appointive member of the
32 Commission, except the first members, is 4 years. Each
33 appointing authority shall appoint one of the members first
34 appointed for a term of 2 years. If a vacancy occurs, the
35 appointing authority shall fill the vacancy for the unexpired
36 term. An appointing authority shall not appoint more than one
37 resident of any county. The Governor shall not appoint more
38 than two members of the same political party. No member
39 may be a member of a commission on judicial selection.

40 5. The Legislature shall establish:

41 (a) In addition to censure, retirement and removal, the
42 other forms of disciplinary action that the Commission may
43 impose;

44 (b) The grounds for censure and other disciplinary action
45 that the Commission may impose, including, but not limited



to, violations of the provisions of the Code of Judicial Conduct;

(c) The standards for the investigation of matters relating to the fitness of a justice or judge; and

(d) The confidentiality or nonconfidentiality, as appropriate, of proceedings before the Commission, except that, in any event, a decision to censure, retire or remove a justice or judge must be made public.

6. The Supreme Court shall adopt a Code of Judicial Conduct.

7. The Commission shall adopt rules of procedure for the conduct of its hearings and any other procedural rules it deems necessary to carry out its duties.

8. No justice or judge may by virtue of this section be:

(a) Removed except for willful misconduct, willful or persistent failure to perform the duties of his office or habitual intemperance; or

(b) Retired except for advanced age which interferes with the proper performance of his judicial duties, or for mental or physical disability which prevents the proper performance of his judicial duties and which is likely to be permanent in nature.

9. Any matter relating to the fitness of a justice or judge may be brought to the attention of the Commission by any person or on the motion of the Commission. The Commission shall, after preliminary investigation, dismiss the matter or order a hearing to be held before it. If a hearing is ordered, a statement of the matter ~~[shall]~~ *must* be served upon the justice or judge against whom the proceeding is brought. The Commission in its discretion may suspend a justice or judge from the exercise of his office pending the determination of the proceedings before the Commission. Any justice or judge whose removal is sought is liable to indictment and punishment according to law. A justice or judge retired for disability in accordance with this Section is entitled thereafter to receive such compensation as the Legislature may provide.

10. If a proceeding is brought against a justice of the Supreme Court, no justice of the Supreme Court may sit on the Commission for that proceeding. *If a proceeding is brought against a judge of the court of appeals, no judge of the court of appeals may sit on the Commission for that proceeding.* If a proceeding is brought against a district judge, no district judge from the same judicial district may sit on the Commission for that proceeding. If a proceeding is brought against a justice of the peace, no justice of the peace



1 from the same township may sit on the Commission for that
2 proceeding. If a proceeding is brought against a municipal
3 judge, no municipal judge from the same city may sit on the
4 Commission for that proceeding. If an appeal is taken from an
5 action of the Commission to the Supreme Court, any justice
6 who sat on the Commission for that proceeding is disqualified
7 from participating in the consideration or decision of the
8 appeal. When any member of the Commission is disqualified
9 by this subsection, the Supreme Court shall appoint a
10 substitute from among the eligible judges.

11 11. The Commission may:

12 (a) Designate for each hearing an attorney or attorneys at
13 law to act as counsel to conduct the proceeding;

14 (b) Summon witnesses to appear and testify under oath
15 and compel the production of books, papers, documents and
16 records;

17 (c) Grant immunity from prosecution or punishment when
18 the Commission deems it necessary and proper in order to
19 compel the giving of testimony under oath and the production
20 of books, papers, documents and records; and

21 (d) Exercise such further powers as the Legislature may
22 from time to time confer upon it.

23 And be it further

24 RESOLVED, That Section 3 of Article 7 of the Nevada
25 Constitution be amended to read as follows:

26 ~~{See:}~~ *Sec.* 3. For any reasonable cause to be entered on
27 the journals of each House, which may ~~{,}~~ or may not be
28 sufficient grounds for impeachment, the ~~{Chief Justice and~~
29 ~~associate}~~ justices of the Supreme Court, *the judges of the*
30 *court of appeals, if established by the Legislature,* and *the*
31 judges of the district courts ~~{shall}~~ *must* be removed from
32 office on the vote of two thirds of the members elected to
33 each branch of the Legislature. ~~{, and the}~~ *The* justice or
34 judge complained of ~~{, shall}~~ *must* be served with a copy of
35 the complaint against him ~~{, and shall}~~ *and* have an
36 opportunity of being heard in person or by counsel in his
37 defense. ~~{, provided, that no}~~ *No* member of either branch of
38 the Legislature ~~{shall be}~~ *is* eligible to fill the vacancy
39 occasioned by such removal.

40 And be it further

41 RESOLVED, That Section 8 of Article 15 of the Nevada
42 Constitution be amended to read as follows:

43 ~~{See:}~~ *Sec.* 8. The Legislature shall provide for the
44 speedy publication of all statute laws of a general nature ~~{,}~~
45 and such decisions of the Supreme Court ~~{,}~~ *and the court of*



1 *appeals, if established by the Legislature,* as it may deem
2 expedient . ~~{; and all}~~ *All* laws and judicial decisions ~~{shall}~~
3 *must* be free for publication by any person . ~~{; provided, that~~
4 ~~no}~~ *No* judgment of the Supreme Court *or the court of*
5 *appeals* shall take effect and be operative until the opinion of
6 the court in such case ~~{shall be}~~ *is* filed with the clerk of said
7 court.

